



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 Church Street
L&C Annex 6th Floor
Nashville, TN 37243-1534

May 27, 2008

Mr. Jack Bell, Registered Agent
Horn Springs Development, Inc.
1333-C West Main Street
Lebanon, Tennessee 37087

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7099 3400 0014 0970 4827

Subject: DIRECTOR'S ORDER NO. WPC08-0050
HAMILTON SPRINGS
WILSON COUNTY, TENNESSEE

Dear Mr. Bell:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Paulette Barton at (615) 532-0683.

Sincerely,

Patrick Parker, Manager
Enforcement and Compliance Section

PNP:BPB

cc: DWPC – EFO-Nashville
DWPC – Compliance File
OGC



**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 Church Street
L&C Annex 6th Floor
Nashville, TN 37243-1534**

May 27, 2008

Mr. Mark Thorne, Registered Agent
Thorne Excavating Company, LLC
624 Old Horn Springs Road
Lebanon, Tennessee 37087

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7099 3400 0014 0970 4810

Subject: DIRECTOR'S ORDER NO. WPC08-0050
HAMILTON SPRINGS
WILSON COUNTY, TENNESSEE

Dear Mr. Thorne:

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IN THE MATTER OF:

HORN SPRINGS DEVELOPMENT, INC.,

and

THORNE'S EXCAVATING COMPANY, LLC

RESPONDENTS

DIVISION OF WATER POLLUTION CONTROL

CASE NUMBER WPC 08-0050

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed director of the Tennessee Division of Water Pollution Control (hereinafter the “director” and the “division” respectively) by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the “commissioner” and the “department” respectively).

II.

Horn Springs Development, Incorporated (hereinafter “Respondent HSD”) is the owner/developer of a commercial and residential housing development described as Hamilton Springs in Wilson County (hereinafter the “site”). Service of process may be made on Respondent HSD through its Registered Agent, Jack Bell, at 1333-C West Main Street, Lebanon, Tennessee 37087.

III.

Thorne's Excavating Company, LLC (hereinafter "Respondent Thorne") is an active limited liability company licensed to conduct business in the State of Tennessee and was contracted by Respondent HSD to conduct excavation activities at the site. Service of process may be made on Respondent Thorne through its Registered Agent, Mark Thorne, at 624 Old Horn Springs Road, Lebanon, Tennessee 37087.

JURISDICTION

IV.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (the "Act") has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the "Rule"). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

V.

The Respondents are "persons" as defined by T.C.A. §69-3-103(20) and as herein described, the Respondents have violated the Act.

VI.

Tennessee Code Annotated §69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction Activity (TNCGP) may be obtained by submittal of a Notice of Intent (NOI), site-specific Storm Water Pollution Prevention Plan (SWPPP), and appropriate fee.

VII.

Pursuant to T.C.A. §69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (ARAP) that is not governed by a general permit or a §401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

VIII.

Horn Springs Branch and its unnamed tributaries, referred to herein, are “waters of the state” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

FACTS

IX.

On April 3, 2007, the Nashville Environmental Field Office (NEFO) received an application, SWPPP, and appropriate fee from Respondent HSD requesting coverage under the TNCGP for construction activities at the site. The division issued TNCGP coverage on April 16, 2007, and assigned tracking number TNR145331. Although coverage was issued, Respondent HSD's NOI was incomplete. The division requested that Respondent HSD complete the NOI by identifying a primary contractor or a contractor otherwise responsible for Erosion Prevention and Sediment Control (EPSC) implementation and maintenance at the site as required by the TNCGP.

X.

On May 31, 2007, Respondent HSD submitted an updated NOI to the division naming Respondent Thorne as the primary contractor at the site.

XI.

On July 2, 2007, the division referred a complaint pertaining to sediment-laden water purportedly from blasting activities at the site to the City of Lebanon Municipal Separate Storm Sewer System (MS4) Program. A city official with the MS4 program conducted a site investigation and observed that the silt fencing, already installed to protect a sinkhole at the site, had been overwhelmed allowing sediment to migrate into the sinkhole and off site. The city official spoke with Respondent Thorne and advised him to repair the silt fencing and to divert construction stormwater runoff away from the sinkhole, and into a nearby sediment basin. Respondent Thorne was further advised to improve the EPSC measures around the sinkhole for

added protection. The city official contacted the division to report his findings and stated that he would continue to monitor the site for blasting activities and that he had suggested that Respondent Thorne to follow-up with the division regarding the implementation and repair of the EPSC measures.

XII.

On August 28, 2007, Respondent HSD submitted an application to the division's Natural Resources Section (NRS), requesting authorization under an individual ARAP to install an impoundment to an unnamed tributary to Horn Springs Branch (hereinafter "Stream 4") for water retention and to use as a temporary road crossing. The application also included a request to relocate an intermittent stream (hereinafter "Stream 3") to allow for subdivision construction.

XIII.

On November 6, 2007, personnel from the NRS conducted a site visit to examine the proposed stream alterations requested in the August 28, 2007, ARAP application. At the entrance of the site, NRS personnel observed that a flow of sediment had migrated from the site across Old Horn Springs Road and into waters of the state. The sediment originated from multiple roadbeds, then under construction at the site. There were several areas at the site where the installed EPSC measures had failed, allowing sediment to discharge into Horn Springs Branch and its tributary, Stream 4. Sediment was observed to have entered Horn Springs Branch at Horn Springs Branch Road, and sediment deposits were also observed in the stream at West Clay Drive. Stream 4 had been completely filled with sediment up to a point where it converged with an active discharge from a sediment detention basin. These discharges of sediment from the site resulted in conditions of pollution in Horn Springs Branch and Stream 4.

XIV.

On November 8, 2007, personnel from the NRS issued a Notice of Violation (NOV) to Respondent HSD for violations observed during the November 6, 2007, site visit. Respondent HSD was advised to immediately repair the failed EPSC measures and to submit a restoration plan to restore the stream back to its original condition.

Along with the NOV, Respondent HSD was provided an application for authorization under the General ARAP Permit for Sediment Removal and Stream Remediation. Respondent HSD was advised to submit the completed ARAP application to the NEFO within 30 days of receipt of the NOV and include a detailed plan to remove the sediment from the stream channel in a manner that would not adversely affect the natural banks and channel of the stream.

XV.

On December 6, 2007, the division received correspondence from Respondent HSD's representative which included the ARAP application, a copy of an environmental site assessment dated November 27, 2007, and a proposed sediment removal and stream remediation plan in response to the November 8, 2007, NOV.

Respondent HSD's representative stated that Respondent Thorne had implemented and maintained Best Management Practices (BMP) at the site including the placement of additional silt fencing along an unnamed tributary, the construction of an earthen diversion berm to divert stormwater runoff to an existing sediment basin, and the application of hydro-seeding to disturbed areas. Respondent HSD's representative also stated that as grading operations were completed at the site, the disturbed areas would be stabilized and additional BMPs added.

Respondent HSD's representative also stated that Respondent Thorne had added additional silt fencing and constructed an earthen curb to divert construction stormwater runoff to an in-stream sediment detention basin, just upstream of an in-stream check dam, both of which had been installed in Stream 3. Respondent HSD's representative stated that, although he was aware that TDEC regulations prohibit the installation of sediment detention basins and check dams in waters of the state, the sediment detention basin and the check dam Respondent Thorne had installed at the site were, in their opinion, the primary reasons why sediment is now staying on-site.

XVI.

On December 19, 2007, NRS and other division personnel conducted an inspection to document site conditions relating to the ARAP application for sediment removal and stream remediation requested by Respondent HSD on December 6, 2007. During this inspection, sediment deposits were observed in Stream 4 along the entire reach of the streambed for approximately 200-300 feet, downstream of a newly constructed earthen levee. It was also noted that a temporary road crossing had been installed in Stream 4. These activities resulted in a condition of pollution to waters of the state.

It was also observed that sediment had migrated from the in-stream detention basin in Stream 3 to where it converged with Stream 4, depositing sediment at the confluence and into Stream 4. At another location at the site, at West Clay Drive, sediment deposits 1-4 inches in depth were noted to be present in Horn Springs Branch. All of these sediment discharges resulted in a condition of pollution to waters of the state.

XVII.

On January 8, 2008, the division issued a NOV to Respondent HSD for the violations observed during the December 19, 2007, site visit. Respondent HSD was advised to immediately stabilize the site to prevent further illicit discharges of sediment-laden construction storm water into waters of the state.

The division informed Respondent HSD that the December 6, 2007, ARAP application submitted for sediment removal could not be approved as submitted.

Respondent HSD was further advised to submit a Corrective Action Plan (CAP) within 30 days of receipt of the NOV, to address the restoration of the altered stream channels to their original condition, including the remediation of the discharged sediment from the site. The CAP was also to include a thorough evaluation of the sediment impacts to Horn Springs Branch and its unnamed tributaries, and detailed plans of the methods to be used for the removal of the unauthorized in-stream sediment basin and check dam.

XVIII.

On January 23, 2008, the NRS sent correspondence to Respondent HSD pertaining to the site inspection conducted on December 19, 2007. NRS personnel noted that site conditions during the inspection were not reflective of or in accordance with the information Respondent HSD had submitted with the August 28, 2007, ARAP application requesting authorization to impound Stream 4 and relocate Stream 3. Also, NRS personnel noted that a temporary road crossing had been installed in Stream 4. Respondent HSD had requested ARAP authorization for this alteration to waters of the state, but it had not been issued.

The NRS further stated that due to Respondent HSD's non-compliance with TNCGP requirements at the site and due to conducting alterations to waters of the state without ARAP